**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**SECOND APPEAL NO.706 OF 2006**

The State of Maharashtra ...Appellant
vs.
Dattu Pandurang Patil ...Respondent

Mr.A.R.Patil,A.G.P. for State.

**CORAM: A.S.OKA, J.**
**DATED: JULY 26, 2006.**

**P.C.:**

1. Heard learned A.G.P. for the Appellants. The Appellants are the original Defendants. The Trial Court partly decreed the suit filed by the Respondents. The decree was not challenged by the Appellants. However, in the Appeal preferred by the Respondent-Plantiff, the first Appellate Court has interfered and granted a further relief in favour of the Respondent.

2. The Appellants issued a bill in the sum of Rs.31,580/- to the Respondent-Plaintiff claiming water charges on account of illegal use of water by the Respondent-Plaintiff. The said amount is already recovered by the Appellants. A suit was filed by the Respondent for declaration that the bill issued by the Appellants was illegal. The Trial Court partly decreed the suit by passing a money decree in the sum of Rs.7858/- in favour of the Respondent on account of excess water charges recovered by the Appellants. The Appellate Court has held that the bill was illegal and therefore the Appellants have been directed to repay the amount recovered by them under the said bill. However, the claim for damages has been dismissed by the Appellate Court.

3. The learned A.G.P. for the Appellants submitted that there was no reason for the Appellate Court to disbelieve the evidence of the witness examined by the Appellants. He submitted that unauthorised user by the Respondent was clearly established by the said witness. He submitted that only on the basis of the entries in the pass book at Exh.57, the first Appellate Court has passed an order for recovery of the amount.

4. I have considered the submissions. The Panchnama which was placed on record by the Appellants clearly discloses that the same was prepared without issuing notice to the Respondent-Plantiff. That is the specific finding recorded by the first Appellate Court in paragraph No.16 of its Judgment. The finding of fact has been recorded that the Panchnama was not even signed by the first Respondent. The first Appellate Court has referred to the various provisions in the Irrigation Manual of the first Appellant and observed that the Panchanama is not made by following the rules incorporated in the Manual. The first Appellate Court also observed that the notice dated 3rd March 1999 issued by the Appellants did not disclose that the demand made was of the charges for using the water unauthorisedly. It is also not mentioned in the notice that the demand was on the basis of Panchnama. Moreover, the first Appellate Court has relied upon the entries in the pass book standing in the name of the Respondent. Thus, the findings of the Appellate Court are based on appreciation of oral and documentary evidence on record. No substantial question of law arises. Second

Appeal is dismissed with no order as to costs.

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**Judge.**